bound thereby, should accept the definition of the legislature in ascertaining or giving effect to intention from the language of the enactment itself.

CRIMINAL LAW

FEDERAL ANTI-RACKETEERING STATUTE—CONSTITUTIONALITY OF PROVISION FOR SUIT ONLY AT DIRECTION OF ATTORNEY-GENERAL

An indictment was found against the defendant, based upon the federal anti-racketeering statute. The defendant challenged both statute and indictment; the former because it provides that prosecution under it "shall be commenced only upon the express direction of the attorney-general of the United States," [1] the latter because of its declaration that "this prosecution has been commenced upon the express direction of the attorney-general of the United States." The demurrer was overruled. *U. S.* v. *Bioff et al.*[2]

In challenging the statute itself, defendant relies upon both the doctrine of procedural due process and that of non-delegability of legislative power. In adversely disposing of the due process objection the court reasoned that the attorney-general's power over the suit is but an adaptation of the prosecuting attorney's historic power, without leave of court, to arrest prosecution by *nolle prosequi*.[3] It might have added that the existence of such accepted power in the attorney-general in no way resembles those serious interferences with the conduct of an impartial trial which have been judicially condemned in the name of due process.[4] The other constitutional contention is more difficult of disposition. If the power of control over criminal prosecutions under the act involves, not the policy formulation that is the essence of the legislative function but that judgment as to law enforcement which is intrusted to the executive, the answer

[1] 48 Stat. 980, 18 U. S. C. A. Sec. 420 C. (Supp. 1940).

[2] 40 F. Supp. 497 (S. D. N. Y. 1941)

[3] U. S. v. Woody, 2 F. (2d) 262 (D. Mont. 1924).

[4] Moore v. Dempsey, 261 U. S. 86 (1923), mob domination of trial; Brown v. Miss., 297 U. S. 278 (1935), conviction upon third-degree evidence; *see* Mooney v. Holohan, 294 U. S. 103 (1935), indicating a similar result in case of conviction on perjured testimony.

is of course clear.[5] But if the power be viewed as legislative, the defendant's case is stronger. True the proscription against the delegation of legislative power is not absolute;[6] participation in the exercise of the power can be vested in executive agencies or officers provided the guiding outline of policy is that of the legislature.[7] Nor need channelizing controls be spelled out in the statute when the language employed calls up a vivid background of accepted meaning.[8] But here there is a total want of express guides to the exercise of the attorney-general's power. Yet the answer on the constitutional issue must be the same, for the absence of tangible control is compensated for by the existence of an historic practice, which establishes definite guides to action and non-action.

In objecting to the attorney-general's power as a statement of fact in the indictment, defendant shifted in his attack from constitutional to criminal law. To avoid the general rule that an indictment does not fail by reason of the receipt by the grand jury of inadmissible evidence,[9] defendant attempted to bring the facts under an exceptional class of cases by arguing that the knowledge that "Washington wants this indictment," tends to overawe the grand jury and so is prejudicial.[10] In refusing to extend the rule the court cited several statutes which give the attorney-general power to appear in person and to conduct proceedings before a federal grand jury.[11] This being true, the court held, the mere report to the grand jury of the attorney-general's direction does not afford ground for objection.[12] The responsibility for determining when the criminal ma-

[5] Mutual Film Corp. v. Industrial Commission of Ohio, 236 U. S. 230 (1915); Locke's Appeal, 72 Pa. 491 (1873); Cincinnati W. and X. R. R. v. Clinton County Comm'rs., 1 Ohio St. 77 (1852).

[6] Cousens, *The Delegation of Federal Legislative Power to Executive Officials,* (1935) 33 MICH. L. REV. 512. Whiteside, *Delegata Potetas Non Potest Delegari: A Maxim of American Constitutional Law,* (1929) 14 CORN. L. Q. 168.

[7] Panama Refining Co. *et al.* v. Ryan *et al.,* 293 U. S. 388 (1935); Butterfield v. Stranahan, 192 U. S. 470 (1904).

[8] Interstate Commerce Commission v. Ill. C. R. Co., 215 U. S. 452 (1910); Interstate Commerce Commission v. Chicago R. I. & P. R. Co., 218 U. S. 88 (1910); A. L. A. Schechter Poultry Corp. *et al.* v. U. S., 295 U. S. 495 (1935). The constitutionality of the statutes in the *I. C. C.* cases was upheld because there was an historic meaning of the term *"reasonable rates."* In the *Schechter* case the court overruled part of the N. I. R. A. because there was no such background for the term "fair competition."

[9] Anderson v. U. S., 273 F. 20 (C. C. A. 8th 1921).

[10] U. S. v. Rubin *et al.,* 218 F. 234 (D. Conn. 1914). The indictment was quashed because of hearsay evidence.

[11] 5 U. S. C. A. Sec. 310; 15 U. S. C. A. Sec. 4, 25 and 77T (b).

[12] U. S. v. Gramlich *et al.,* 19 F. Supp. 422 (S. D. Ill. 1937). The court held the indictment would not fail because the quoted language was omitted, since it appeared affirmatively from the records of the clerk's office that such authority was extended by the attorney-general before the grand jury investigation was instituted.

chinery of the government should be put in motion, must be lodged somewhere. It is an historical fact that the attorney-general has always had control of public prosecutions in England,[13] and in this country, except where such control has been diminished by statute.[14]

C. R. M.

DOMESTIC RELATIONS

Rebutting the Presumption of Legitimacy—Divorce for Fraudulent Contract.

The parties in the case first became acquainted sometime during the spring of 1937; the plaintiff, a man, claiming the first meeting was May 18; the defendant, a woman, claiming it was March 29. A week after their first meeting they engaged in illicit sexual relations. Pregnancy resulted, and the defendant later brought a bastardy charge against the plaintiff. Rather than stand trial on the charge, he married her in October. On the following January 4, a child was born to the defendant which according to the attending physician had been conceived approximately March 31. The plaintiff, believing he was not the father of the child, sought a divorce on the grounds of fraudulent contract, a statutory ground in Ohio,[1] claiming the defendant had fraudulently secured the marriage by declaring him to be responsible for her pregnancy. The common pleas court found that the plaintiff was not the father of the child, and granted a divorce. The defendant appealed. *Held*: Reversed. When a man, who has had illicit relations with a woman, marries her, knowing at the time she is pregnant, he is conclusively presumed to be the father of the child, and a divorce cannot be obtained on the ground of fraud. *Kawecki* v. *Kawecki,* 67 Ohio App. 34, 21 Ohio Op. 76 (Court of Appeals of Lucas County 1941).

In Ohio, every child born during lawful wedlock is presumed to be legitimate.[2] Before the plaintiff can prove that the defendant's representation respecting the paternity of the child was fraudulent, he must overcome this presumption. However, in the principal case

[13] Howard, Criminal Justice in England p. 37; 3 Encyc. Brit. 63; 3 Bl. Comm. 27.
[14] Booth v. Fletcher, 101 F. (2d) 676 (App. D. C. 1938).
[1] Ohio Gen. Code, Sec. 11979.
[2] Powell v. State, 84 Ohio St. 165, 95 N. E. 660 (1911).